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2003 Regular Session
3lr1859

By: Senator Forehand

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

#### A BILL ENTITLED

## 1 AN ACT concerning

# 2 Punitive Damages - High-Risk Drunk Drivers

- 3 FOR the purpose of authorizing a finder of fact to determine that a person with a
- 4 certain alcohol concentration in the blood or breath of the person who causes
- 5 personal injury or wrongful death while driving or attempting to drive a motor
- 6 vehicle was acting with malice and award punitive damages under certain
- 7 circumstances; requiring a party who seeks to recover punitive damages under
- 8 this Act to plead certain facts with particularity; providing for a standard of
- 9 proof of clear and convincing evidence for a claim of punitive damages under this
- Act; providing that punitive damages under this Act may not be awarded in the
- absence of an award of compensatory damages; providing that evidence of the
- defendant's financial means is not admissible until there has been a finding of
- liability and that punitive damages under this Act are supportable under the
- facts; authorizing a motor vehicle insurer to exclude coverage for an award of
- punitive damages under this Act; providing that an exclusion of certain coverage
- for punitive damages does not constitute a reduction in coverage by a motor
- vehicle liability insurer; defining a certain term; providing for the application of
- this Act; and generally relating to authorizing a finder of fact to determine that
- a person who causes personal injury or wrongful death while driving or
- attempting to drive with a certain alcohol concentration in the blood or breath of
- the person was acting with malice and award punitive damages under certain
- 22 circumstances.
- 23 BY adding to
- 24 Article Courts and Judicial Proceedings
- 25 Section 10-913.1
- 26 Annotated Code of Maryland
- 27 (2002 Replacement Volume)
- 28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 29 MARYLAND, That the Laws of Maryland read as follows:

1

## Article - Courts and Judicial Proceedings

- 2 10-913.1.
- 3 (A) IN THIS SECTION, "MOTOR VEHICLE" HAS THE MEANING STATED IN § 4 11-135 OF THE TRANSPORTATION ARTICLE.
- 5 (B) THIS SECTION DOES NOT AFFECT THE PROVISIONS OF:
- 6 (1) THE LOCAL GOVERNMENT TORTS CLAIMS ACT UNDER TITLE 5, 7 SUBTITLE 3 OF THIS ARTICLE; OR
- 8 (2) THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12 OF THE STATE 9 GOVERNMENT ARTICLE.
- 10 (C) SUBJECT TO THE PROVISIONS OF THIS SECTION, A FINDER OF FACT MAY
- 11 DETERMINE THAT A PERSON WHO CAUSES PERSONAL INJURY OR WRONGFUL DEATH
- 12 WAS ACTING WITH MALICE AND AWARD PUNITIVE DAMAGES IF THE PERSON CAUSES
- 13 PERSONAL INJURY OR WRONGFUL DEATH WHILE DRIVING OR ATTEMPTING TO
- 14 DRIVE A MOTOR VEHICLE:
- 15 (1) WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.14 OR MORE AS
- 16 MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS OF
- 17 ALCOHOL PER 210 LITERS OF BREATH; OR
- 18 (2) WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.08 OR MORE AS
- 19 MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS OF
- 20 ALCOHOL PER 210 LITERS OF BREATH, AND THE PERSON:
- 21 (I) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE PERSON'S
- 22 LICENSE TO DRIVE WAS SUSPENDED OR REVOKED UNDER § 16-205 OF THE
- 23 TRANSPORTATION ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE STATUTE;
- 24 (II) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE PERSON'S
- 25 LICENSE TO DRIVE WAS SUSPENDED UNDER § 16-205.1 OF THE TRANSPORTATION
- 26 ARTICLE OR A COMPARABLE FEDERAL OR OTHER STATE STATUTE;
- 27 (III) WAS DRIVING OR ATTEMPTING TO DRIVE WHILE THE PERSON'S
- 28 LICENSE TO DRIVE WAS SUSPENDED OR REVOKED FOR AN ACCUMULATION OF
- 29 POINTS UNDER § 16-402(A)(24), (32), OR (33) OF THE TRANSPORTATION ARTICLE OR A
- 30 COMPARABLE FEDERAL OR OTHER STATE STATUTE; OR
- 31 (IV) WITHIN THE PAST 5 YEARS, WAS CONVICTED, ENTERED A PLEA
- 32 OF NOLO CONTENDERE. OR RECEIVED PROBATION BEFORE JUDGMENT UNDER:
- 33 1. § 21-902 OF THE TRANSPORTATION ARTICLE;
- 34 2. § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE
- 35 CRIMINAL LAW ARTICLE; OR

### **SENATE BILL 454**

- 1 3. A COMPARABLE OFFENSE TO AN OFFENSE SPECIFIED IN 2 ITEM 1 OR 2 OF THIS ITEM UNDER A FEDERAL OR OTHER STATE STATUTE.
- 3 (D) A CLAIM FOR PUNITIVE DAMAGES UNDER THIS SECTION:
- 4 (1) SHALL BE PLEADED, BY COMPLAINT OR AMENDMENT, WITH FACTS
- 5 SUPPORTING THE CLAIM WITH SUFFICIENT PARTICULARITY TO ESTABLISH THAT
- 6 THE PARTY MAY BE ENTITLED TO PUNITIVE DAMAGES UNDER THIS SECTION;
- 7 (2) SHALL BE PROVED BY CLEAR AND CONVINCING EVIDENCE:
- 8 (3) MAY NOT BE AWARDED IN THE ABSENCE OF AN AWARD OF 9 COMPENSATORY DAMAGES; AND
- $10 \hspace{1.5cm} \text{(4)} \hspace{1.5cm} \text{SHALL COMPLY WITH THE PROVISIONS OF } \hspace{1.5cm} 10\text{-913 OF THIS} \hspace{1.5cm} 11 \hspace{1.5cm} \text{SUBTITLE}.$
- 12 (E) (1) A MOTOR VEHICLE LIABILITY INSURER MAY EXCLUDE COVERAGE 13 FOR PUNITIVE DAMAGES AWARDED UNDER THIS SECTION.
- 14 (2) AN EXCLUSION OF COVERAGE FOR PUNITIVE DAMAGES UNDER
- 15 PARAGRAPH (1) OF THIS SUBSECTION DOES NOT CONSTITUTE A REDUCTION IN
- 16 COVERAGE BY THE MOTOR VEHICLE LIABILITY INSURER.
- 17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
- 18 construed to apply only prospectively and may not be applied or interpreted to have
- 19 any effect on or application to any cause of action arising before the effective date of
- 20 this Act.
- 21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 22 October 1, 2003.